STATE OF TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS

IN THE MATTER OF:	)	**DIVISION OF WATER RESOURCES**
	)	**CASE NUMBER WPC24-0062**
	)	
DEPARTMENT OF ENVIRONMENT	)	
AND CONSERVATION,	)	
Petitioner,	)	
	)	
v.	)	**DOCKET NUMBER 04.30-255676J**
	)	
TOWN OF TELLICO PLAINS	)	
TENNESSEE,	)	
Respondent.	)	**Judge Claudia Padfield**

NOTICE OF FILING

The Department of Environment and Conservation, by and through the undersigned counsel, hereby provides notice that the Board of Water Quality, Oil, and Gas met on February 17, 2026, and held a review hearing in *TDEC v. Tellico Plains*, APD Docket Number 04.02-244954A. The Board voted to adopt the attached Final Order, which affirms in part and modifies in part the Initial Order entered by Administrative Judge Mark Garland on September 30, 2025.

Respectfully submitted on February 19, 2026.

/s/ Samantha Buller-Young
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Filing has been sent to the following by email and certified mail on February 19, 2026:

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STATE OF TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS

IN THE MATTER OF:	)	**DIVISION OF WATER RESOURCES**
	)	**CASE NUMBER DWS23-0190**
	)	
DEPARTMENT OF ENVIRONMENT AND CONSERVATION,	)	
Petitioner,	)	
	)	
v.	)	
	)	
TOWN OF TELLICO PLAINS TENNESSEE,	)	**DOCKET NUMBER 04.02-244954A**
	)	**JUDGE MICHAEL BEGLEY**
Respondent.	)	

FINAL ORDER

This matter came before the Board of Water Quality, Oil, and Gas ("Board") on February 17, 2026, with Administrative Judge Michael Begley assigned by the Secretary of State, Administrative Procedures Division ("APD") sitting with the Board. The petitioner, Department of Environment and Conservation ("Department"), was represented by attorneys Samantha Buller-Young and Emily B. Vann. The respondent, Town of Tellico Plains ("Town"), was represented by attorney Brian C. Quist.

The contested case hearing on this matter was heard *de novo* on June 16-17, 2025, in Knoxville, Tennessee, before Administrative Judge Mark Garland, assigned by APD to sit on behalf of the Board, upon the Town's appeal of Director's Order DWS23-0190 ("Director's Order"). The Director's Order was an administrative enforcement order issued by the Department's Division of Water Resources ("Division") for violations of the Safe Drinking Water Act, Tenn. Code Ann. §§ 68-221-701 to -721 ("SDWA").

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Judge Garland issued an Initial Order on September 30, 2025, affirming in part and modifying in part the civil penalty assessed in the Director's Order ("Initial Order"). Following the entry of the Initial Order, the parties each filed motions for costs. On October 15, 2025, Judge Garland entered an order denying the Town's motion for costs and attorney's fees. On October 21, 2025, Judge Garland entered an order granting the Department's motion for costs in this matter.

Both parties timely appealed the Initial Order to the Board. The Town also appealed both the denial of its motion for costs and attorney's fees and Judge Garland's award of the Department's costs. The Initial Order and Certified Technical Record were provided to the Board on January 5, 2026. The Department filed its appeal brief on January 9, 2026, and the Town late-filed its brief on January 12, 2026. The Department and the Town each filed response briefs on January 30, 2026. The parties' briefs were provided to the Board on February 3, 2026.

The Board heard arguments from the parties on February 17, 2026. After considering the arguments of the parties and the Certified Technical Record as a whole, the Board affirms the Initial Order in part and modifies the Initial Order in part as further described below. The Board also affirms Judge Garland's denial of the Town's request for costs and attorney's fees and his award of the Department's costs.

The Board's review of the Initial Order is limited to the record and therefore the Board makes no additional findings of facts, but provides the below summary based on the Findings of Fact from the Initial Order:

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FINDINGS OF FACT

1. The Town owns and operates a drinking water system, identification number TN0000693. (R. at 828–29.)[1] The type and frequency of monitoring that a public water system must perform under the rules depend on the category of public water system, population served, and type of water source. The Town's drinking water system is a community water system as defined in the Board's rules.[2] (R. at 829.) The system obtains its water from eight wells that are classified as not under the direct influence of surface water, commonly referred to as "true groundwater." *Id.* When compared to surface water, groundwater has the least potential for contamination at its source. However, potential harm is increased for a community water system because it serves more people, thereby increasing the risk of exposure to contaminants.

2. The Town has two water treatment plants: the Main Plant[3] and the Rural Vale Plant. (R. at 1098, Tr. IV, 503:11-20.) At the time of the violations outlined in the Director's Order, the Town's system served approximately 2,443 connections and a population of approximately 6,132 people. (R. at 1461, ¶ 3.)

3. The Town is required to have certified operators in four areas: water treatment (WT1), distribution (DS1), wastewater treatment (STP-2), and collections (CS-1). (R. at 1463, ¶ 4.)

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[1] Citations to the Certified Technical Record are identified by the initial "R" followed by the blue Bates reference number located on the lower left corner of each page. Citations to the contested case hearing transcript will also list the transcript volume (I-IV) and the specific transcript page number and line numbers, for convenience. Citations to Hearing Exhibits will be indicated by "Hr'g Ex." or "Hr'g. Exs." for multiple exhibits.

[2] The Board has promulgated rules governing the operation of public water systems. TENN. COMP. R. & REGS. 0400-45-01 *et seq.* ("the Rules").

[3] The Technical Record contains references uses both "the Main Plant and "the Town Plant" to identify this facility. For clarity this order will exclusively use "the Main Plant" to identify the facility.

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4. On July 14, 2023, the Town's certified operator, Mr. Robert Patty, informed Mr. Brad Antone, an Environmental Manager with the Department, that Mr. Patty's last day of employment with the Town would be July 28, 2023. (R. at 891–92, Tr. Vol. I, 72:24-73:15.)

5. Mr. Patty held all four operator certifications for the Town. During the Town's 2019 sanitary survey, the Department advised the Town of the risks associated with having a single operator holding all four certifications. (R. at 940, Tr. Vol. II, 161:11-162:17; 947–48, Tr. Vol. II, 192:15-193:10.)

6. On July 17, 2023, Mr. Antone mailed Mayor Marilyn Parker a letter reminding her of the Town's obligation to maintain certified operators.[4] The letter included a list of certified operators and advised Mayor Parker that a Certified Operators Agreement form, along with a letter identifying the Town's new wastewater system operator, "must be completed and returned to [the Department] by August 30, 2023." (R. at 892, Tr. Vol. I, 73:16; 1093, Tr. Vol. IV, 485:19-486:12; Hr'g Ex. 10.)

7. The Town released Mr. Patty from his employment effective July 19, 2023. Mayor Parker informed the Department of Mr. Pattty's departure on July 19, 2023. (R. at 893, Tr. Vol. I, 78:21-25; 938, Tr. Vol. II, 154:22-155:5; 944–45, Tr. Vol. II, 180:14-181:19; 1090, Tr. Vol. IV, 471:1-473:3; Hr'g Ex. 18.)

8. On July 21, 2023, Mr. Antone sent a revised letter to Mayor Parker advising her that a Certified Operators Agreement form and a letter identifying the Town's new wastewater system operator "must be completed and returned to the [Department] by August 19, 2023." (R. at 893, Tr. Vol. I, 78:13-18; 893, Tr. Vol. I, 79:1-5; Hr'g Ex. 11.)

[4] Mr. Antone also tried to email the letter and attachments to Mayor Parker, but sent the email to an incorrect email address, which delayed the Town's receipt of the information.

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9. In mid-August 2023, the Town experienced a significant rainfall event that flooded the Main Plant and the wastewater plant. The Main Plant shut down due to a loss of water pressure, and the wastewater plant overflowed, causing raw, untreated sewage to run into the Tellico River. The Town was without certified operators at this time. This hindered the Town's ability to take required bacteriological samples and other steps required to get the drinking water and wastewater systems back to normal operating conditions. (R. at 893–94, Tr. Vol. I, 79:11-84:9; 894, Tr. Vol. I, 81:4-84:9; 895, Tr. Vol. I, 85:5-86:11; Hr'g Ex. 12.)

10. On August 15, 2023, Department staff conducted a site visit and assisted the Town by providing, among other things, guidance on issuing a boil water notice and how to take proper bacteriological and chlorine residual samples. (R. at 896, Tr. Vol. I, 89:4-23.)

11. On August 22, 2023, Mr. Antone sent Mayor Parker a Notice of Violation (NOV). The NOV advised that the August 19, 2023, deadline for the Town to identify a new operator had passed and required the Town to complete and return a Certified Operators Agreement form and a letter identifying the Town's new wastewater system operator to the Department by September 21, 2023, to avoid further enforcement action. (R. at 894–95, Tr. I, 84:10-92:7; Hr'g Ex. 12-13.)

12. On September 7, 2023, the Town hired Mr. Troy Taubert as its water treatment operator. (Hr'g Ex. 5, p. 2; Hr'g Ex. 37.)

13. On September 26, 2023, the Department sent correspondence to the Town advising that it would conduct a sanitary survey of the Town's system on September 28, 2023. The Department also advised that the Town it needed to complete a Certified Operator Agreement form for the drinking water system operator (distribution operator) and returned it to the Department by October 25, 2023, to avoid further enforcement action, including the assessment of civil penalties. (Hr'g Ex. 14.)

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14. On or about November 28, 2023, the Town hired Mr. Jonathan Dixon as its distribution operator. By this time, the Town had been without a distribution operator for just over four months. (Hr'g Ex. 23.)

15. Mr. Erich Webber, Environmental Technical Advisor for the Department's drinking water program, spoke with Mr. Taubert shortly after he took over as the Town's water treatment operator. They discussed an issue with the Town's continuous chlorine analyzer (CCA), and Mr. Webber advised Mr. Taubert not to submit numbers on the CCA data submittals if he did not have an actual record with data points. (R. at 951, Tr. II, 206:13-208:14.)

16. Mr. Taubert submitted the Town's July and August 2023 Disinfectant Monitoring Reports in blank, containing no data. (Hr'g Exs. 26, 27.)

17. At Mr. Taubert's request, Ms. Jenna Williams, an Environmental Specialist II with the Department, along with other Departmental staff, conducted the requested sanitary survey on September 28-29, 2023. (R. at 958, Tr. Vol. II, 234:1-16; 959, Tr. Vol. II, 237:21-239:10; 959, Tr. Vol. II, 240:1-15; Hr'g Ex. 29.) During the sanitary survey, Ms. Williams determined that the Town only collected six of seven required bacteriological samples and six of seven required disinfectant residual samples in July of 2023. (R. at 961, Tr. Vol. II, 245:8-246:7; Hr'g Ex. 29.) She also observed that CCA data was not available for certain days in July and August of 2023, and learned that while the Rural Vale CCA was malfunctioning, the Town did not take grab samples every four hours as required in the event of a monitoring or recording equipment breakdown, as no grab sample results were available. (R. at 961, Tr. Vol. II, 246:8-247:24; Hr'g Ex. 29.)

18. The Town did not repair the Rural Vale CCA within 14 days as required by the rules. (R. at 953, Tr. II, 215:1-24; 1117, Tr. IV, 581:15-23; Hr'g Exs. 28, 29.)

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19. On December 11, 2023, the Division sent a Sanitary Survey Report and NOV to the Town, which detailed the deficiencies identified during the sanitary survey. (Hr'g Ex. 29.)

20. The Department uses the Environmental Protection Agency's (EPA's) Enforcement Tracking Tool (ETT) to track the compliance of every water system in the state. Each water system earns an ETT score based on its history of compliance with both federal and state environmental regulations during a five-year period. The ETT score fluctuates as older violations drop off and new violations are added. At all times relevant in this matter, the Town's ETT score ranged from 7 to 19. (R. at 878–80, Tr. Vol. I, 22:22-28:16; 878, Tr. Vol. I, 17:21-22:21; Hr'g Exs. 1, 2.)

21. Consistent with EPA policy, the Department prioritizes formal enforcement actions against water systems whose ETT score reaches 11 or higher. (R. at 1019, Tr. Vol. III, 348:17-349:2; Hr'g Ex. 3.)

22. The EPA policy does not preclude the Department from engaging in formal enforcement actions against a water system with an ETT score that falls below 11. (R. at 962–63, Tr. Vol. II, 250:6-254:25; 1025–27, Tr. Vol. III, 376:7-380:3.)

23. In December 2023, Mr. Tom Moss, an Environmental Manager in the Department's Compliance and Enforcement Unit, drafted the Director's Order. As part of the order-writing process, Mr. Moss reviewed the case file, including the most recent sanitary survey, and calculated civil penalties using the Department's Uniform Guide for Calculation of Civil Penalties ("the Uniform Policy"). (R. at 972, Tr. Vol. II, 290:8-16; 972, Tr. Vol. II, 292:4-18; 973–74, Tr. Vol. II, 294:2-298:20; 1019, Tr. Vol. III, 348:20-349:24; 1020, Tr. Vol. III, 353:13-354:9; Hr'g Exs. 33, 34, 35.)

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24. The Department proceeded to formal enforcement for several reasons, including the fact that the Town was without a certified water distribution operator for almost four months, the Town's sanitary survey identified several deficiencies, and the Town's ETT score had fluctuated above 11. (R. at 970, Tr. Vol. II, 284:21-285:5; 1020–21, Tr. Vol. III, 354:1-357:8.)

25. On March 21, 2024, the Department issued the Director's Order to the Town. (Hr'g Ex. 33.)

26. The Town took only six of the seven required bacteriological samples for July 2023. For this violation, the Department properly assessed a civil penalty of $1,000 in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

27. The Town took only six of the seven required disinfectant (chlorine) samples in the distribution system for July 2023. For this violation, the Department properly assessed a civil penalty of $100 in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

28. The Town failed to report chlorine residuals for July and August 2023. For this violation, the Department properly assessed a total civil penalty of $3,200 ($1,600 for each month) in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

29. The Town failed to report that the Rural Vale CCA was inoperable. For this violation, the Department properly assessed a civil penalty of $4,000 in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

30. The Town failed to continuously monitor the chlorine residual leaving the water treatment plant when it failed to collect grab samples in July and August of 2023. The Town also and continuously monitor the chlorine residual leaving the water treatment plant when it failed to repair the CCA within 14 days. For this violation, the Department properly assessed a total civil

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penalty of $4,800 ($1,600 for each month) in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

31. The Town failed to have a certified water treatment operator for August 2023 and a certified distribution operator for August, September, and October 2023. For this violation, the Department properly assessed a total civil penalty of $4,800 ($1,600 for each month) in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

32. Pursuant to the Uniform Policy, the Department also properly assessed an upward adjustment of $3,330 for the Town's failure to have certified operators. (Hr'g Ex. 34.)

33. The record demonstrates that the Department properly calculated the civil penalties for the violations at issue in this case. Departmental witnesses and Mr. Taubert testified, providing opposing opinions on an appropriate civil penalty amount. The Department's witnesses have years of training and experience in evaluating violations and calculating civil penalties across the state, while Mr. Taubert does not. Therefore, the testimony of the Department's witnesses regarding the amount and calculation of the civil penalties is more credible and is entitled to more weight than the opinions offered by Mr. Taubert. (R. at 895–96, Tr. Vol. I, 87:6-89:3; 896, Tr. Vol. I, 89:4-90:4; 896–97, Tr. Vol. I, 91:13-93:18; 897, Tr. Vol. I, 94:13-96:8; 905, Tr. Vol. I, 127:21-128:19; 907, Tr. Vol. I, 133:13-136:3; 907–08, Tr. Vol. I., 136:16-138:14; 950, Tr. Vol. II, 201:15-204:7; 953, Tr. Vol. II, 213:9-214:17; 961, Tr. Vol. II, 247:6-24; Hr'g Exs. 13, 14, 17, 29, 33, 34, 35.)

34. The Department is not pursuing the $12.40 damages amount assessed in the Director's Order, nor is it pursuing civil penalties for the following violations:

a. Failure to take seven bacteriological samples in August of 2023 (one of two violations alleged in paragraph X of the Order).

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b. Failure to take seven disinfectant residual samples in August of 2023 (one of two violations alleged in paragraph XI of the Order).

c. Failure to report the chlorine residual leaving the plant on September 15, 2023 (one of three violations alleged in paragraph XII of the Order).

(R. at 834–35; 1014–15, Tr. Vol. III 331: 2-332:20; 1027, Tr. Vol. III, 383:5-13; 1029–30, Tr. Vol. III, 388:11-392:15; Hr'g Exs. 33, 34.)

35. Consistent with the Uniform Policy, the Director's Order divided the total civil penalty into an upfront portion and a remainder portion. After removing the violations and damages no longer being pursued, the total calculated civil penalty is $22,830. Of that amount, the upfront portion is $4,566 (20%), and the remainder portion is $18,264. (R. at 1468–69.)

ANALYSIS AND CONCLUSIONS OF LAW

The Board has jurisdiction to hear and render a decision in this contested case proceeding under Tenn. Code Ann. §§ 68-221-712(a) and -713(b)(2)(A). The Department, as the petitioner, bears the burden of proof in this case. *See* Order Determining Certain Questions of Law entered on February 19, 2025. The conclusions of law set forth in the Order Granting Partial Summary Judgment are incorporated herein by reference. Those conclusions found that the Department met its burden of proof on the issue of liability and that the violations at issue occurred.

The Town first asserts that the Director's Order is invalid and therefore should be dismissed, and no penalty imposed, because the Town's ETT score fell below 11. The EPA policy only creates a prioritization for formal enforcement actions against water systems whose ETT score reaches 11 or higher. (Hr'g Ex. 3.) The SWDA provides the Department with statutory enforcement authority, and the EPA policy does not preclude the Department from pursuing enforcement against a water system for any violation of federal and state environmental

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regulations. *See* TENN. CODE ANN. §§ 68-221-702, -705(1), (2), (8) ("bring suit in the name of the Department for any violation of this part, rules and regulations of the board"), (9) ("assess civil penalties for violations of any provision of this part or any rule, regulation, or standard"), (10) ("issue orders as may be necessary to secure compliance"), (11) ("investigate any alleged or apparent violation of this part and take any action authorized hereunder as the commissioner deems necessary to enforce these sanctions") (emphasis added). Moreover, the EPA policy itself does not specifically preclude the use of formal enforcement actions against a water system with an ETT score below 11. The EPA policy sets a bar that the Department cannot fall below, but it does not preclude the Department from going above that bar to enforce state law.[5]

Because the Town committed the violations as assessed in the Director's Order, *see* R. at 836, the remaining question is whether the Department established by a preponderance of the evidence that the assessment of civil penalties imposed in the Director's Order is appropriate under the SDWA and not otherwise arbitrary and capricious. The SDWA establishes a range for civil penalties of "not less than fifty dollars ($50.00) nor more than five thousand dollars ($5,000) per day for each day of violation." TENN. CODE ANN. § 68-221-713(a)(1). The civil penalties assessed for each violation in this case fall within this range. Therefore, they do not violate the SDWA.[6]

The Department uses the Uniform Policy across all of its statutory schemes in which civil penalties are calculated. The Uniform Policy requires the Department to determine 1) the gravity

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[5] In other words, the EPA policy on which the Town relies does not preempt state law. "[T]he only agency actions that can determine the answer to the pre-emption question, of course, are agency actions taken pursuant to the [federal agency's] congressionally delegated authority. The Supremacy Clause grants "supreme" status only to the "the Laws of the United States." And pre-emption takes place "'only when and if [the federal agency] is acting within the scope of its congressionally delegated authority, ... for an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it.'" *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 315 (2019) (internal citations omitted). *See also Kemp v. Medtronic, Inc.*, 231 F.3d 216, 222 (6th Cir. 2000) (noting that "the states' police powers relating to public health and safety are not preempted by federal law unless Congress' intent to do so is clearly expressed.")

[6] In fact, many of the penalties are significantly less than they could have been. The maximum penalties for the violations at issue could have exceeded one hundred thousand dollars.

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or percentage of the deviation, 2) whether a multi-day component should be included, 3) whether any adjustments should be made to the initial penalty, and 4) whether the cost of any economic benefit gained through non-compliance should be included.

To determine the gravity of the deviation of a SDWA violation, the Department first establishes which of the statutory factors set forth in TENN. CODE ANN. § 68-221-713(d) apply. (Hr'g Ex. 35 at 5, 8.) The evidence shows that the Department identified the harm or potential harm to the public, the deterrent effect of the civil penalty, and the effort put forth by the Town to remedy the violations as the statutory factors relevant to the assessed civil penalty.

After determining which statutory factors apply, the Department then determines whether the harm to public health or the environment is major, moderate, or minor and whether the deviation from the regulatory requirement is major, moderate, or minor. The evidence shows that the Department identified harms or potential harms to public health associated with each violation and properly determined whether those harms or potential harms, and the deviation from each regulatory requirement, were major, moderate, or minor. (R. at 1028, Tr. Vol. III, 385:22-386:5; 1028, Tr. Vol. III, 387:7-20; 1029, Tr. Vol. III, 391:8-19; 1030, Tr. Vol. III, 392:22-393:3; Hr'g Exs. 33, 34, 35.) As noted above, the Department's witnesses have years of training and experience in evaluating violations and calculating civil penalties across the state, and the fact that the Town can think of worse potential harm that could possibly occur does not discredit the determinations made by the Department.[7]. The credible testimony of the Department's witnesses and the facts presented support the conclusion that the Department properly determined the harm or potential harm to public health and the deviation from the regulatory requirement for each violation. Thus,

[7] At the hearing, the Town suggested that a violation resulting in illness or death would constitute a major harm and a major deviation, and that the Town's violations in this case cannot be major because they do not rise to that level.

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the Department properly determined the gravity or percentage of each deviation and properly applied its determinations to the penalty matrix.

The Department exercised its discretion and did not apply the Uniform Policy's multi-day factor in this case, however, the Department did adjust the overall civil penalty upward for the Town's failure to have certified operators. The Department sent multiple 30-day notice letters to remind the Town that the hiring deadline had passed and remind it of the risk of formal enforcement. The Town was put on notice in 2019 about the risks associated with having a single operator who holds all four certifications and the evidence demonstrates that the Town failed to mitigate those risks. The evidence further shows that it is highly unusual for a water system to go 90 days without a certified distribution operator. The Department could have imposed an economic benefit penalty based on the Town's cost savings of not having a distribution operator on staff but chose not to do so. Considering the foregoing, the penalty adjustment for failure to have certified operators was appropriate.

Adminstrative Judge Garland properly determined that "[u]ltimately, the selection of the exact penalty amount … is based upon the discretion and judgment of the case manager and the Division Director in any given case." (Hr'g Ex. 35 at 9.) The Department did not abuse its discretion or make an arbitrary or capricious calculation of the civil penalties in this case. Accordingly, the Department has proven by a preponderance of the evidence that its civil penalty calculation is appropriate and in compliance with applicable law and policy.

The SDWA empowers the Department to "issue orders as may be necessary to secure compliance with [the SDWA], as well as the rules and regulations adopted pursuant to [the SDWA]." TENN. CODE ANN. § 68-221-705(10). The Director's Order contained compliance action requirements, enumerated in paragraph XVI, Items (3) through (7). (Hr'g Ex. 35.) Items (4)

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through (7) made certain deferred portions of the correctly calculated total civil penalty due upon the existence of future violations. (Initial Order, R. at 1476.). Because the Town is already obligated to comply with these requirements, the Department's remedy is to issue a new enforcement order based on those future facts, which includes an appropriate civil penalty sufficient to deter that noncompliance (Initial Order, R. at 1469, 1474.).

However, the Initial Order incorrectly held that the deferred portions of the total civil penalty, assessed for the Town's past violations, tied to compliance actions (4) through (7) were void. The Initial Order correctly held that the Town committed the violations outlined in the Director's Order and that the Department properly assessed a total civil penalty for those past violations. If the total civil penalty is correct, then the appropriate outcome if corrective actions (4) through (7) fall away is that the assessed civil penalty amount becomes due and owing in full. The divvying up of the total assessed penalty among the corrective action requirements was merely a way for the Town to avoid payment of those portions upon completion of the corresponding action. If the action cannot be completed, payment must be made. The Initial Order reduction of the total civil penalty for the Town's past violations of the SDWA to $4,566 was inconsistent with the Initial Order's holding that "the total civil penalty calculation is reduced to $22,830" and therefore Judge Garland simply erred in voiding the deferred portions of the civil penalty along with the corrective actions.

One of the corrective actions required by the Director's Order differs in structure from all the other corrective actions. Item (3) required the Town to "submit standard operating procedures (SOP) for the water treatment plant" within 60 days. (Not. of Hr'g, Ex. A, R. at 16–17.) Unlike the other corrective actions, which are structured in the negative ("don't commit a violation"), this corrective action imposes an affirmative action (submit SOPs) that must be taken within a definite

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timeframe (60 days). This type of corrective action is precisely the kind that is contemplated by the SDWA, because it is geared toward securing compliance with the SDWA and its implementing rules. Item (3) is a valid compliance action item, and its deferred penalty of ($1,500) could still be triggered. The Initial Order erred in voiding Item (3).

The Department used its enforcement discretion to encourage compliance by deferring most of the civil penalty. Because the overall civil penalty calculation is correct and the Town cannot perform the compliance action Items (4) through (7) as they are void, the deferred portions of the civil penalty tied to those items are instead due and owing.

CONCLUSIONS OF LAW

1. The Department has proven by a preponderance of the evidence that its civil penalty calculation is appropriate, in compliance with applicable law and policy, and not otherwise arbitrary or capricious. *See* TENN. CODE ANN. §§ 68-221-713(a)(1), (d)(1), and the Uniform Policy. Because the Department is no longer pursuing three of the violations and is not seeking to collect the $12.40 in damages, the total civil penalty calculation is reduced to $22,830.

2. The Initial Order erred in voiding paragraph XVI, Item (3) of Director's Order DWS23-0190, because Item (3) is a valid corrective action that does not offend due process principles.

3. Because compliance action Items (4) through (7) of Director's Order DWS23-0190 are voided, the Town is responsible for payment of $21,330 of the total civil penalty within 30 days of the entry of this Final Order. However, because Item (3) is affirmed, the remainder amount of $1,500 is not due unless the Town fails to submit standard operating procedures for the water treatment plant, which shall include grab sampling as required with breakdown of equipment,

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including the maximum allowable timeframe grab sampling is allowed, within 60 days of the Board's order becoming final.

4. Adminstrative Judge Garland properly denied the Town its costs and attorney's fees in this matter as outlined in his October 15, 2025, order.

5. Adminstrative Judge Garland properly awarded the Department its costs in this matter of $5,340.00 as outlined in his October 21, 2025, order.

REASONS FOR DECISION

For the reasons set forth above, the Initial Order is **AFFIRMED IN PART** and **MODIFIED IN PART**. Additionally, the award of the Department's cost in this matter of $5,340.00 is **AFFIRMED**. The policy reason for affirming and modifying these orders is that they comply with the laws of the State of Tennessee and are consistent with the purpose of the SDWA to protect the right of the people of Tennessee to an adequate quality and quantity of drinking water.

Entered this the 17TH day of Feb., 2026.

Dodd Galbreath, Chair
Board of Water Quality, Oil, and Gas

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RECONSIDERATION ADMINISTRATIVE RELIEF AND JUDICIAL REVIEW

Within fifteen (15) days after the entry of an initial or final order, a party may file a petition to the Board for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition with the Board, it is deemed denied. TENN. CODE ANN. § 4-5-317.

In addition, a party may petition the Board for a stay of the Final Order within seven (7) days after the effective date of the Final Order. TENN CODE ANN. § 4-5-316.

Finally, a party may seek judicial review by filing a petition for review with the chancery court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the chancery court of Davidson County within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend the sixty (60) day period; however, if the petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the petition. TENN. CODE ANN. § 4-5-322.

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